IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.3.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.32995 of 2003
& W.P.M.P.No.39930 of 2003

D.Gnanasekar .. Petitioner

vs.

1. The Govt. of Tamil Nadu
rep. by its Secretary to Govt.,
Rural Development Department,
Fort St.George, Chennai-9.

2. Director of Rural Development,
Panagal Building,
Saidapet, Chennai-15.

3. The District Collector,
Tiruvannamalai District,
Tiruvannamalai.

4. The Registrar,
Tamil Nadu Administrative Tribunal,
City Civil Court Buildings,
Chennai. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, by calling for the records pertaining to order dated 23.9.2003 passed in O.A.No.8117 of 2000 by the Tamil Nadu Administrative Tribunal, the fourth respondent herein, confirming the order bearing No.G.O.(1-D).No.357, dated 19.7.2000, Rural Development Department, of the first respondent herein and quash the order dated 23.9.2003.

For petitioner : Mr.V.Suthakar

For respondents : Mr.V.Raghupathy, Govt. Pleader for RR-1 to 3
R-4 Tribunal

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ORDER

R.SUDHAKAR,J.

The petitioner herein is challenging the order of the fourth respondent-Tribunal, passed in O.A.No.8117 of 2000, dated 23.9.2003. Before the Tribunal, the petitioner challenged the correctness of G.O.(1-D).No.357, Rural Development Department, dated 19.7.2000, wherein the petitioner was imposed with punishment of stoppage of increment for three years without cumulative effect.

2. In the year 1987, the petitioner was working as Assistant Accountant in Thurichapuram Panchayat Union and he was assigned the job of Accountant in the Scheme for implementation of National Rural Employment Programme and Rural Landless Employment Guarantee Programme funded by the Central Government and executed by the Panchayat Union. The said Scheme was for the benefit of landless labourers. A Manager was allotted to look after the execution of the project and the petitioner herein was the Accountant in-charge of the stock of foodgrains to be disbursed under the Scheme. Under the Scheme, certain quantity of cash besides stock of wheat and rice was allotted to the Panchayat Union. The foodgrains were stored in the Panchayat Union godown to be disbursed as wages to the landless labourers for the implementation of the Scheme. At the relevant point of time, one Venkasubramanian was the Manager of the project. In December 1987, the said Venkatasubramanian was on leave and the petitioner, who was in-charge, received a quantity of 26.680 metric tons of rice from the Food Corporation of India godown on 1.12.1987. The said foodgrains were stored in a private godown by the petitioner and issued the same to the various Panchayats in execution of the abovesaid Scheme. It was noticed by the audit department in the year 1989 that there was a shortfall in the total quantity of the foodgrains to an extent of 26.680 metric tons, which was taken delivery by the petitioner. Based on the audit report, the District Development Officer conducted an enquiry and the statements were recorded from all persons concerned. In course of these proceedings, it was found that the petitioner was responsible for receipt and issue of the stock of foodgrains during the relevant time. However, as per the rules and instructions, the Manager of the Panchayat Union was also liable for the loss of stock. On 15.9.1990, the Divisional Development Officer, Thiruvannamalai, by his proceedings Na.Ka.A.1.12975/1989, fixed the over all responsibility on the Manager and determined the loss caused due to the shortage of foodgrains at Rs.53,138/- and directed that the same should be recovered from the pensionary benefits of the Manager who had since retired. The appeal preferred by the Manager was rejected by the District Collector, Thiruvannamalai, on 19.11.1990. The Manager Venkatasubramanian, aggrieved by the order of recovery of the abovesaid sum of Rs.53,138/-, filed O.A.No.3566 of 1990 before the Tamil Nadu Administrative Tribunal and during the pendency of

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the abovesaid Original Application, it is stated that the said Manager expired. The Tribunal however quashed the recovery order of the Divisional Development Officer on the ground that it was violative of Rule 9(2) of the Tamil Nadu Pension Rules and there was also an observation by the Tribunal that the receipt of 26.680 metric tons of rice on 1.12.1987 has not been entered in the Stock Register when the Manager was not on duty. Therefore, it was for the authorities to probe into the matter. Based on the said order of the Tribunal, it appears that the further clarification and enquiry resulted in the unfolding of the involvement of the petitioner and other persons in the delinquency. Thereafter, by proceedings dated 28.12.1991, the District Collector, Thiruvannamalai, issued a charge memo to the petitioner and Lakshmikanthan under Rule 17(b) of the Tamil Nadu Government Civil Service (Discipline and Appeal) Rules for the aforesaid loss of foodgrains which occurred during the period when the petitioner was in-charge as Accountant under the aforesaid Scheme. The allegations pertain to the period 1987 when the petitioner was working as Accountant in-charge of the food stock received by the Union. On 14.1.1992, the petitioner submitted his explanation to the charge memo. A District Town Panchayat Officer was appointed as enquiry officer who gave his report on 10.2.1992. In the meanwhile, by his proceedings dated 11.11.1993, the Collector of the District concerned passed an order holding that due to the irregularities that happened during the period 30.11.1987 when the stock of 26.680 metric tons of rice was taken delivery from the Food Corporation of India by the concerned Panchayat Union, there occurred a loss to the tune of Rs.53,138/- to the Government. In the said order, it is stated that as far as the charge memo was concerned, the papers were sent to the Director of Rural Development for passing final orders. It is stated by the Collector in the order dated 11.11.1993 that based on the proceedings of the Director of Rural Development, a sum of Rs.13,284.50 equivalent to 25% of the total amount of Rs.53,138/-, was directed to be recovered from the petitioner for the loss caused to the Government. Similar orders of recovery were made on S.Venkatasubramanian, R.Lakshmikanthan and Basheer Ahamed. The said sum was directed to be recovered by 13 monthly instalments from the salary of the petitioner and remitted to the concerned Panchayat Union. According to the petitioner, the order dated 11.11.1993, wherein recovery of money was ordered, is the order of punishment on the charge memo dated 28.12.1991. However, on 2.12.1998, a show cause notice was issued by the Government enclosing the findings of the enquiry officer. On 13.1.1999, the petitioner gave his representation stating that the disciplinary proceedings have already ended on 11.11.1993 by the order of the District Collector, directing the recovery of a sum of Rs.13,284.50 and prayed for dropping all the charges. However, by the proceedings in G.O.(1-D).No.357, dated 19.7.2000, which is the order impugned before the Tribunal, the Government took into consideration the various charges found proved by the enquiry officer and passed an order of punishment of stoppage of increment for a period of three years without cumulative effect. As against this order, O.A.No.8117 of 2000 was filed before the Tribunal. The

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Tribunal, while admitting the application, granted stay of the order of punishment dated 19.7.2000. It is also stated that by order dated 29.1.2001, the petitioner was promoted as Extension Officer temporarily pursuant to the order of the Tribunal in O.A.No.21 of 1998, dated 30.6.2000. However, by the subsequent order dated 23.9.2003, the Tribunal dismissed O.A.No.8117 of 2000, which is the subject matter of the writ petition.

3. The main contentions of the writ petitioner are as follows:

(i) The disciplinary proceedings culminated by order dated 11.11.1993 passed by the District Collector, Thiruvannamalai, wherein, an order for recovery of the loss was made and this should be construed as the punishment under Rule 8 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules.

(ii) There has been inordinate delay in finalising the disciplinary proceedings inasmuch as the charge memo was issued on 28.12.1991 and the enquiry was conducted on 10.2.1992 and the order imposing the punishment was passed on 19.7.2000. The delay in passing the order of punishment vitiates the entire disciplinary proceedings.

(iii) There is no evidence to hold the petitioner guilty of the charges and the findings of the enquiry officer are perverse, since the District Collector in his earlier proceedings held that the Manager alone is responsible for the entire loss and the Manager having died on 19.11.1991, the proceedings were started afresh against the petitioner and therefore, the entire exercise is unjust and improper.

4. As far as the first contention made by the petitioner is concerned, on a bare reading of the order dated 11.11.1993, it is very clear that the District Collector has referred all the relevant papers to the Director of Rural Development for passing final orders on the charge memo. The proceedings of the District Collector are only in respect of the recovery of a sum of Rs.13,284.50, which amounts to 25% of the total loss of Rs.53,138/- caused to the Government. Similar orders of recovery have been issued to other persons also. This, by any stretch of imagination, cannot be treated as an order passed pursuant to the charge memo. The proceedings dated 27.9.1993 of the Director of Rural Development based on which recovery was ordered, was also verified and found that it was independent of the charge memo dated 28.12.1991. It is also seen that the petitioner has made a representation dated 7.9.1996 and requested the Director of Rural Development to drop the charges framed against the memo 25851/91 dated 28.12.1991 issued by the District Collector on the ground that he had remitted the entire amount of Rs.13,284.50. If the understanding of the petitioner is that the order dated 11.11.1993 of the Collector is the final order, there was no reason for him to represent to the Director of Rural Development that the charges framed should be dropped. Therefore, it is clear that on

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completion of the enquiry, the matter was before the Director of Rural Development to decide about the further course of action to be taken in respect of the charge memo and that is the reason why the petitioner, by his letter dated 7.9.1996, requested the Director of Rural Development to drop the charges. The order of the District Collector dated 11.11.1993 is an order for the recovery for the loss caused to the Government simpliciter. In such view of the matter, it cannot be said that the order dated 11.11.1993 is an order of punishment based on the charge memo, but it is only an order for recovery of loss caused to the Government. The contention of the petitioner on this score is rejected.

5. The next contention of the petitioner is relating to the delay in finalising the disciplinary proceedings stating that the charge memo was issued on 28.12.1991, the enquiry was completed on 10.2.1992, the show cause notice was issued on 2.12.1998 and the order of punishment was passed on 19.7.2000 and therefore, the entire disciplinary proceedings are vitiated in view of the delay. In this case, more than one person are involved in the delinquency, namely causing loss to the Government by not accounting for the food stock received, in the records. The proceedings have been initiated initially for recovery of loss caused to the Government. Thereafter, in view of the conduct of various officers involved in the case, a charge memo dated 28.12.1991 was issued. No doubt, the enquiry was completed on 10.2.1992. According to the respondents, the issue could not be finalised, because one of the persons against whom the charges were framed was the Block Development Officer and the file had to be sent to the Director of Rural Development and to the Government for consideration. While proceedings were initiated for recovery of the loss caused to the Government on the one hand, the Department was also pursuing the charge memo issued under Rule 17 (b). According to the respondents, the show cause notice was issued on 2.12.1998 after taking into consideration all the materials and the enquiry report in respect of the various officers involved in the case. The Government thereafter after considering the explanation of the various delinquent-officers, accepted the findings of the enquiry officer who found that six out of ten charges framed against the petitioner have been proved and passed an order of punishment dated 19.7.2000. It will be pertinent to point out that when the show cause notice dated 2.12.1998 was issued based on the enquiry report dated 10.2.1992, the petitioner submitted an explanation dated 13.1.1999, in this reply, it was not the case of the petitioner that delay will vitiate the proceedings and petitioner was put to prejudice by such proceedings. On the contrary, he gave his detailed explanation to the various findings. No prejudice on account of delay was pleaded at that point of time. Further, even before the Tribunal, the petitioner has not faulted with the disciplinary proceedings on this score and therefore, he cannot at this point of time plead that the delay would vitiate the proceedings. This plea, now taken at the time of final hearing of the writ petition, does not form part of the grounds raised in the writ petition. It is pertinent to point out that even though the proceedings were

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pending pursuant to the charge memo, the petitioner was considered for promotion as Extension Officer. However, the subsequent promotion was not considered in view of the order of punishment imposed. Therefore, the plea of prejudice as now argued by learned counsel for the petitioner at the time of final disposal of the writ petition, does not have any merit. In a case reported in 2006 (1) C.T.C. 476 (Parameswaran vs. State of Tamil Nadu), a Division Bench of this Court quashed the charge memo on the ground that there was an inordinate delay and protracted disciplinary proceedings which called for interference by the Court. However, it was not a case of misappropriation or retention of Government money, but failure to complete the work entrusted to the petitioner in that case. It was a case of negligence in monitoring the projects and non-utilising the funds within the time prescribed. One other aspect of the case referred to above which needs to be considered is that three sets of charge memos were issued from time to time. However, the disciplinary proceedings were not completed, and therefore, the Court interfered with the disciplinary proceedings, which is evident from paragraph 8 of the said order of the Division Bench of this Court, which reads thus:

> "8. The above details amply show that there is no explanation at all for not pursuing the first and second charge memos or for not considering the explanations offered by the petitioner for the same. Likewise, there is no reply for not pursuing the third charge memo, when admittedly no order of stay was passed by the Tribunal in O.A.No.2420 of 1994. In other words, though the said application had been filed before the Tribunal in 1994 and the same was disposed of on 4.7.2002, admittedly, there was no order bearing the Department from proceedings with the charge memo. Even before us, there is no answer for not pursuing the charge memo and completing the enquiry."

In this background of the case, the charge memo was quashed. In the present case, pursuant to the charge memo, enquiry was completed. A show cause notice was issued and on explanation, it ended by the order of punishment. There was no pleading at any point of time by the petitioner that prejudice has been caused due to the delay in the disciplinary proceedings. The facts in the present case are distinguishable from the facts of the case referred to above. In the present case, according to the enquiry report which is confirmed by the disciplinary authority, it is a clear case of misappropriation and misconduct by the petitioner by not properly accounting for the foodgrains meant for the welfare Scheme, thereby causing loss to the Government. In any event, taking into consideration the nature of the charges, the findings of the enquiry officer and the nature of punishment imposed, we find that leniency has been shown in favour of the petitioner by the disciplinary authority. In such view of the matter, the second contention of the petitioner is rejected.

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6. As regards the third contention that earlier proceedings of the District Collector had fixed the responsibility on the Manager and since he had died on 19.11.1991, the proceedings were started afresh against the petitioner and others, were unjust and improper, it is to be noted that the detailed charge memo which was issued to the petitioner contains several factual details as to the role of the petitioner and his responsibility of having taken the delivery of the foodgrains which were found to be short by the audit department and the fact that the petitioner has not shown the quantity received in the account, clearly established his impropriety and misconduct. The enquiry officer has found that six out of ten charges have been proved. The Manager was also found liable, because as per the Rules, he is responsible for any loss, even though at the relevant point of time, the Manager was absent. Recovery was made from the Manager and others also. The contention of the petitioner that he is not guilty of the charges is far-fetched and totally devoid of merits. The detailed enquiry report and the order of the Government clearly establish the role of the petitioner in the alleged misconduct and consequent loss. It is not required by this Court to go into the details and merits of the various charges which have been found to be proved. The petitioner was not able to show any material which would show that the enquiry conducted was inherently defective or it lacked jurisdiction or is in violation of any of the provisions of law. Therefore, we have no hesitation to reject this contention.

7. We find no merits in the various contentions raised in the writ petition. Considering the facts and circumstances of the case, we find no infirmity in the well-considered order of the Tribunal. The writ petition is accordingly dismissed. No costs. W.P.M.P. is closed.

cs

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary to Govt.,
   The Govt. of Tamil Nadu
   Rural Development Department,
   Fort St.George, Chennai-9.

2. The Director of Rural Development,
   Panagal Building, Saidapet, Chennai-15.

3. The District Collector,
   Tiruvannamalai District, Tiruvannamalai.

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4. The Registrar,
Tamil Nadu Administrative Tribunal,
City Civil Court Buildings, Chennai.

+ 1 cc to Mr. V. Suthakar, Advocate SR No.13041

+ 1 cc to The Government Pleader SR No.12745

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